

Congress of the United States  
Washington, DC 20515

April 15, 2013

The Honorable Dave Camp  
Chairman  
House Ways and Means Committee  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Sander Levin  
Ranking Member  
House Ways and Means Committee  
1106 Longworth House Office Building  
Washington, DC 20515

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The Honorable Kevin Brady  
Chair  
Tax Reform Working Group on Energy  
301 Cannon House Office Building  
Washington, DC 20515

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The Honorable Mike Thompson  
Vice Chair  
Tax Reform Working Group on Energy  
231 Cannon House Office Building  
Washington, DC 20515

Dear Chairman and Ranking Member,

We are pleased to submit written comments to the Committee on Ways and Means as it continues to gather comments as part of its tax reform Working Group process. As your Committee considers pro-growth changes designed to make the Code fairer and simpler, we respectfully request that you consider a technical correction to the Internal Revenue Code to resolve an inequity that negatively impacts the people of Alaska and perhaps other similarly situated taxpayers.

Background

In 2001, the Environmental Protection Agency (EPA) announced that refiners would be mandated to reduce the sulfur content of both motor vehicle and off road diesel fuels to 15 ppm by June 1, 2007. Small Business Refiners (SBR), defined as those producing fewer than 205,000 barrels of oil a day and employing fewer than 1,500 persons in their refining operations, were given until June 1, 2010 to fully comply with these Ultra Low Sulfur Diesel (ULSD) standards.

The costs associated with retrofitting the nation's SBR's to produce ULSD ultimately reached into the billions of dollars, confirming EPA's stated view that these modifications constituted "a significant and disproportionate financial hardship" for the nation's small refiners. To help SBR's overcome the financial burden associated with the EPA mandate, Congress included two tax provisions (IRC sections 45H and 179B) in the Energy Policy Act of 2004 to allow SBR's to recover up to 25% of the ULSD capital costs through a 5-cent per ULSD gallon tax credit, while also providing for accelerated depreciation of the remaining capital expenditures.

Proposed Change

The EPA mandate applicable to small business refiners applied in the Lower 48 states by June 10, 2007, but in Alaska did not take effect until June 1, 2010. However, the two tax incentives mentioned above ended five months earlier on December 31, 2009. The lack of symmetry between the EPA compliance date and the sunset

date of the associated tax incentives resulted in a significant amount of otherwise qualifying ULSD capital costs to be excluded from the tax benefit computations.

By moving the sunset date from December 31, 2009, to June 1, 2010, the provisions' effective dates would align with those given to refiners in the Lower 48 states. The technical correction would align the sunset date of IRC section 45H and 179B (i.e., December 31, 2009) with the EPA compliance date (i.e., June 1, 2010).

The proposed technical correction would allow any SBR subject to the separate EPA Mandate for Alaska to have its ULSD capital costs qualify for the tax incentives as Congress intended. Furthermore, we believe the technical correction should not have revenue implications as the Joint Committee on Taxation likely assumed compliance with the EPA mandate by all refiners in its original cost estimates of IRC Sections 45H and 179B.

As the EPA originally provided Alaska refiners with the modification because of its "unique geographical, meteorological, air quality and economic factors," it only makes sense that Congress apply the proposed technical correction to ensure that these refiners serving disadvantaged populations do not face additional financial hardship which could jeopardize the long-term viability of these suppliers of vital diesel fuels to rural and remote areas.

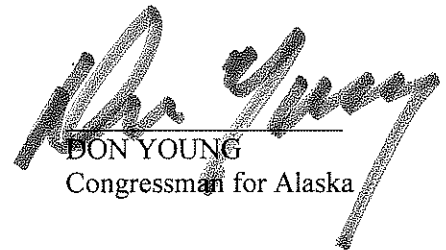
Sincerely,



LISA MURKOWSKI  
United States Senator



MARK BEGICH  
United States Senator



DON YOUNG  
Congressman for Alaska